

EXHIBIT E



PCL/HYD/Juba/2009/445

Date: 16th September, 2009

To

The Employer's Representative,
The Louis Berger Group, Inc
Sudan Infrastructure Services Project (SISP),
Hi Cinema, Hi Malakal, Juba,
Southern Sudan.

Kind Attn: Mr. Andrew V. Bailey II

Subject: Juba to Nimule Road : Sections 1 & 2, Km 0+000 to Km 125+000
Contract Nos. GH 2002-09-01 & GH2002-09-02 : **Lack of
Performance.**

Dear Sir,

This has got reference of your letter dated 17th August, 2009.

2. In this context, following submission is made:-
3. We are equally aware of the concern that you have conveyed us and your displeasure on the status of mobilization activities.
4. We have taken note of your earlier letters. i.e. 1st June, 2009 and 12th August, 2009, wherein the Engineer has expressed concern on the rate of progress that it is not in commensurate with the construction program, specially in respect to listed mobilization activities. You are also aware that most of the personnel and equipments are to be inducted from India, wherein certain formalities with respect to induction have to be completed before these could be deployed physically at site.
5. The above contracts were accepted vide letter Nos. GH2002-09-01/AB-001 dated 16th April, 2009 and GH2002-09-02/AB-002 dated 16th April 2009 Formal agreements were signed on 30th April, 2009 for both packages. The dates of commencement for both packages is reckoned

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as with effect from 1st May 2009 with period of completion for both packages as 548 days each from commencement date.

6. The above contracts have been accepted with a condition that full mobilization will be completed within 90 days from commencement date i.e. by 31st July, 2009. However, because of the problem connected with men, machinery and transfer of funds to Sudan, there has been delay in initial induction of men and machinery and due to exchange problem/resistance in giving BGs by any bank for projects in Sudan, despite our best efforts, which are detailed hereunder:-
- (a) **Temporary Facilities :-** We received the Camp – 1 layout drawing approved by LBG on 3rd August, 2009 vide letter NO. GH2002-09-02 / CK-054. The site however could not be cleaned to start work because Bridge Contractor has to vacate the Camp Site. The Bridge Contractor vacated the Camp Site only on 5th August, 2009.
- (b) **Mobilisation of Key Personnel & Others :-** The delay in mobilization has occurred because of abnormal delay in getting visas with work permits. This aspect has been explained in detail in our weekly meetings by Project Manager time to time. We have submitted our letter No.02 to LBG on 04th May, 2009 for request for work permits, LBG gave their recommendation vide letter No. GH2002-09-02/DL-008 dated 05th May, 2009 but it has taken too much period at different departments of GoSS, due to changing of the policies between Federal Sudan & GoSS (Since we are not getting visas from Khartoum, due to lot of confusions in between Federal Sudan and GoSS). With great support of Dr Daniel Wani, Under Secretary of the Ministry of transport & Roads we could get recommendation letter on 25th June, 2009, after that we got the Work permits on 03rd July, 2009 (To work in Southern Sudan) for 29 Nos persons only. Finally we got Travel Permits (to come to Southern Sudan) for them on 13th July, 2009, which was sent to India,. Thus,

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finally the said batch of personnel could arrive in Juba only on 30th July, 2009.

(c) **Mobilization of Equipments & Plants :-** You are aware that maximum Nos of our machinery are readily available Northern Sudan (Atbara – Haiya Road Project which is since been completed). For shifting of these machineries to Southern Sudan, it is taking too much period than what could have been easily anticipated mainly due to problems between Federal Sudan & GoSS and difficult logistic facilities as well. This aspect has been explained in detail in our weekly meetings. We have submitted our letter No 04 dated 05th May, 2009 to GoSS with LBG recommendation letter No. GH2008-09-02 / DL-066 dated 01st May, 2009, but it has taken too much time at different level of departments of GoSS, (due to frequent changing of the policies between Federal Sudan & GoSS), after only a great support of Dr. Daniel Wani Under Secretary of the Ministry of Transport & Roads, we got a recommendation letter on 18th June, 2009 from Khartoum, but it reached to us at Juba on 13th July, 2009. Still we have not received the Clearance from Ministry of Finance of Sudan though we are trying our level best to bring our machinery as soon as possible to fulfill the mobilization activities. Our 2nd Consignment of machineries which started from Kosti Port on 08th July, 2009 could reach Juba Port only on 08th August, 2009. This enormous/abnormal delay is not in our hands for which we can not be held responsible. 3rd Consignment of machinery has already started from Kosti Port and likely to reach Juba Port in next 7 days.

7. Further, because of banking problems due to the general resistance from banks since project is in Sudan, the BGs could not be arranged in time as would have been normally available in case of projects in other countries. More so because of exchange restrictions in Sudan, which in

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turn has resulted in delay in not only in obtaining the BGs but also in deployment of men and machineries.

8. However, expeditious action trying all possible options are being taken to induct men and machinery as early as possible. Once men and machineries are inducted, the time lost in mobilization shall be covered up.
9. The replies to queries raised however, are submitted here under:-

Query

- (a) Provide dates when all delinquent items, especially, the Bank Guarantees, stated in the Engineer's Rate of Progress letter of August 12 , 2009 will be completed.

Answer

The Bank Guarantees for Performance Guarantees will be submitted by 30th Sept, 2009.

Query

- (b) Provide a status report on the mobilization of plant, equipment, facilities and personnel for the project and advise when each facet will be completed.

Answer

- (i) *Status report in respect of machinery already deployed at site till date and which are in transit is enclosed at appendix A.*
- (ii) *In respect to deployment of personnel at site, a list of personal deployed till date is enclosed in appendix B.*
It may kindly be noted that till date, 67 personnel have already arrived at site and schedule of induction of remaining personnel is given in Appendix C enclosed.

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Query

- (c) Provide an acceptable certification that PCL has the financial capacity to complete the projects in accordance with the Contracts.

Answer

We are enclosing a copy each of following documents:-

- (i) Total turn over during last 3 financial years*
- (ii) Net worth*
- (iii) A certificate of completion of similar work ahead of the schedule under NHAI earning bonus for early completion(KU II)*
- (iv) A certificate of recently completed work which was done at the risk and cost of a defaulting previous contractor, costing to Rs. 2539.87 Millions of Package 1B under NHAI*

All these exhibits demonstrate that PCL has capacity to complete the work within stipulated period of time.

Query

- (d) Provide a recovery plan on what measure PCL intends to take to complete the projects in accordance with contractual time frames.
- (e) Provide a timeline and schedule to indicate how PCL will make up the lost time to date and commit to timely completion of the Works.

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Answer

Revised construction program (Clause 14.1 of GCC) will be submitted by 20th Sept, 2009 indicating how the time lost will be made up.

Query

- (f) Provide your "further assurances" that the necessary personnel, plant, equipment and PCL corporation is committed to complete this contract.

Answer

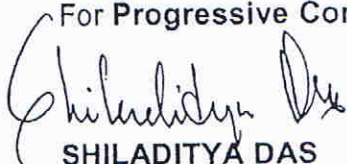
PCL ensures and assures that necessary personnel, plant and equipment will be inducted as per the programme, detailed in Appendix 'D' attached.

- 10 We assure you that we will complete the work to your entire satisfaction and within stipulated period of completion. It may kindly be appreciated that the delay so occurred was absolutely beyond our control. Despite all the odds, we are making all out efforts, so that the work is completed within stipulated period of completion.

Thanking you and assuring of our best services at all times.

Yours faithfully

For Progressive Constructions Ltd.



SHILADITYA DAS

Authorised Signatory

Encl: As above

CC: Mr.Dave Little - The Engineer
Mr.Craig Kapernick - The Engineer's Representative

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EXHIBIT F



THE Louis Berger Group, INC.

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September 22, 2009

Mr. Shiladitya DAS
Authorized Signatory
Progressive Construction Limited

Subject: Juba Nimule Road, Section 1 and 2
Contract Nos. GH2002-09-01 and GH2002-09-02
Lack of Progress

Dear Mr. Das,

I am in receipt of your letter of 16 September, 2009 which was hand delivered by Mr. K. S. Rao during our meeting on 18 September, 2009 at my office in Washington, DC. You noted that your letter was in response to my letter of 17 August, 2009. Additionally you reference several letters from the Engineer regarding the failure of Progressive Construction Limited (PCL) to perform under the above noted contracts.

Based upon emails received from PCL on Friday, 18 September, 2009 and over this past weekend, it now appears that you have made concrete steps to satisfy the required performance guarantee. I believe it is reasonable to conclude that PCL, despite repeated assurances that the performance guarantee and mobilization guarantee were forthcoming, seemingly took no action to place these performance Bond(s) until my recent Notice to Cure i.e., that you conform to the contract. I trust that your commitments made to us over this past weekend, stating that the required Bank Guarantees will be provided not later than Tuesday, 22 September, and this issue will be finally put to rest.

I appreciate your letter and the visit of Mr. Rao, however, I remain concerned that PCL continues to demonstrate that it is unable to complete the two construction projects in accordance with the contract terms and conditions. Last week, virtually all productive effort on the two camp locations stopped, with the explanation that there was no funding available to continue the work.

It is not my intent to respond to each item raised in your letter, as there is much repetition to previous correspondence between the Engineer and your staff. I do find it necessary to correct the record where I believe the comments do not correctly portray the situation. I have referred to the numbers used in your letter for your easy reference.

We believe that PCL has mobilized a sufficient number and type of equipment (4) to increase the pace of development of the two construction camps, however, the equipment is in such a state of disrepair, that many pieces are not functioning. During a field review this past week, several



Mr. Shiladitya DAS
 Page 2
 September 22, 2009

critical pieces of equipment were observed undergoing major overhaul and repair. The condition of equipment to be delivered to the project site is clearly within the purview of PCL. Furthermore, we understand that the operational equipment has been sidelined for much of the past week, lacking the fuel necessary to function.

During my meeting with Mr. Rao, I raised concerns that had been discussed with your field staff relating to equipment mobilization. According to the PCL program, equipment is being transferred from the recently completed project from the Port of Khosti to the Port of Juba (not from India). To date, three shipments of equipment have been received. We have noted that the barges, carrying the equipment are not fully loaded when arriving in Juba, and considerable delay from the arrival of the barge until PCL offloads the equipment. Also with the period between deliveries approaching thirty days, it seems apparent that PCL is utilizing a single barge for transport of equipment. This suggests that the delay in equipment delivery to the project is now purely logistical in nature and completely within the control of PCL.

The history related to the development of the camps is not accurate (6a). The contract requires PCL to submit a camp layout plan for approval by the Engineer. With almost three months of contract time expended and no PCL layout plan received, the Engineer provided your staff a layout that would be acceptable. Your staff elected to use this as its own, and once accepted and submitted was reviewed and approved promptly. PCL had neither the personnel nor the equipment required to develop Camp 1 and Camp 2, and any suggestion that the bridge contractor prevented PCL from access or use of the facility is not accurate. There has always been adequate space for PCL to develop its needed facilities at this location.

It is important to note that PCL did not mobilize its Project Manager to Southern Sudan until after one month of contract time had elapsed (6b). Further during the weekly project meeting on 18 June, your staff reported problems relating to obtaining visas. At the next weekly meeting on 25 June, we were advised that all problems were resolved. It was not until the end of July when the first group of staff arrived from India and after another six weeks no staffing has arrived. The mobilization of staff is the responsibility of the Contractor, and to suggest that all factors relating to mobilization are beyond the Contractor's control is not reasonable, especially for a contractor already working in Sudan.

We have observed periodically that when the duty free application process changes, legitimate delays can occur (6c). We also observe that other contractors dedicate capable staff to manage this process in order to mitigate potential delays. We observe that PCL has not provided or dedicated the appropriate resources to this process and we have received no formal notice from PCL that customs delays have actually impacted your work.

With regard to the last point, we note that PCL has not seen it necessary to give formal notice of delay in accordance with contract requirements. When PCL has raised these informally during



Mr. Shiladitya DAS
Page 3
September 22, 2009

weekly progress meetings or in response to our letters of concern, upon deeper investigation, the delays appear to result from a single root cause – PCL's lack of personnel required to pursue the work. We do not agree and we are unwilling to accept that PCL has been delayed for any reason other than its own inability to provide adequate resources – personnel, equipment, plant and financing.

In your letter and subsequently promised by Mr. Rao, PCL would submit by 20 September the recovery plan previously requested. That date has since passed with no recovery plan received. You must advise me of your revised date for submitting this plan, if any, immediately. Further delay is unacceptable.

Whether the delays experienced at this point in the project may be beyond the control of PCL is arguable. However, your lack of proper mobilization of personnel and equipment and the failure to execute the contract requirements are not. PCL has not pursued the work in accordance with the contract and is causing significant harm to the beneficiaries, the people of Southern Sudan, and the Client, the United States Government through the Agency of International Development (USAID).

We have repeatedly requested PCL to advise us what steps we can take to help you succeed in this work. To date the only suggestion we have is that we fund an additional forty tipper trucks in order to make up for lost time of production. This request certainly increased our concern over PCL's capability to provide the necessary resources to complete the project in accordance with the two contracts. While we desire that PCL successfully complete these contracts, we remain concerned and continue to examine every remedy available to us under the contract.

I look forward to receiving your recovery plan promptly and your taking all necessary and appropriate actions demonstrating your serious commitment to this project.

Respectfully,

Andrew V. Bailey II
Employer
Senior Vice President
The Louis Berger Group, Inc.